

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DELOS INSURANCE COMPANY,
formerly known as Sirius America
Insurance Company,

MEMORANDUM & ORDER
08-CV-4439(JS)(MLO)

Plaintiff,

-against-

TIDEWAY HOMES, INC., ATLANTIC CASUALTY
INSURANCE COMPANY, VENTURA
RENOVATIONS, INC., and FERNANDO CANDO,

Defendants.

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APPEARANCES:

For Plaintiff: Michael Butler, Esq.
White, Quinlan & Staley, L.L.P.
377 Oak Street
P.O. Box 9304
Garden City, NY 11530

For Defendants:

Tideway Homes: No appearance

Atlantic Casualty Insurance Company Lorin A. Donnelly, Esq.
Milber, Makris, Plousadis & Seiden, LLP
1000 Woodbury Road, Suite 402
Woodbury, NY 11797

Ventura Renovations, Inc. No appearance

Fernando Cando Christopher J. Gorayeb, Esq.
Gorayeb & Associates, P.C.
100 William Street
New York, NY 10038

SEYBERT, District Judge:

On or around October 6, 2008, Plaintiff, Delos
Insurance Company ("Delos"), commenced this case in the Supreme

Court of New York, County of Nassau seeking a declaratory judgment. One month later, on November 3, 2008, Defendant Atlantic Casualty Insurance Company ("Atlantic") removed the case to this Court. On November 13, 2008, Tideway Homes, Inc. ("Tideway"), served an Answer to the Summons & Complaint with the New York Supreme Court caption. Counsel representing Tideway was the Law Offices of Michael D. Solomon, by Daniel J. Herrera. Subsequently, Tideway received notice that this case had been removed to the Federal District Court of the Eastern District of New York. On August 21, 2009, Plaintiff brought the present motion for entry of default against Tideway. The next day, on April 22, 2009, counsel for Delos and Atlantic appeared for an initial conference with Magistrate Judge Michael L. Orenstein. Counsel for Tideway did not appear. Thereafter, on June 5, 2009, Daniel J. Herrera of the Law Offices of Solomon & Herrera, PLLC, advised Delos that they no longer represented Tideway in this matter. To date, Tideway has never appeared in this Court nor otherwise defended this action.

By Order dated September 18, 2009, this Court referred the motion for entry of default to Judge Orenstein for issuance of a Report and Recommendation ("R&R"). Judge Orenstein submitted his R&R on December 2, 2009. The time for filing objections to the R&R has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been

waived.

Upon careful review and consideration, the Court ADOPTS the R&R in its entirety. Accordingly, Tideway's Answer is stricken. Furthermore, the Clerk of the Court is directed to enter a Judgment in favor of Delos stating as follows: Under Insurance Policy IRS 108102, Delos has no obligation to provide a defense or indemnification to Tideway, in the personal injury action brought by Fernando Condo. Delos is directed to serve on Tideway a copy of this Order, along with the Judgment, within one week of entry of the Judgment.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 4, 2010
Central Islip, New York